IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

CRP.No. 1327 of 2001(B)

RCA.119/1998 of RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE
RCP.121/1994 ofRENT CONTROL COURT, KOZHIKODE-II

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REVN. PETITIONER/APPELLANT/RESPONDENT NO.1:

VALLIKKATTU ASOKAN, AGED 44, S/O LATE GOPALAN, FOUR CENT COLONY, CHERUVANNUR AMSOM DESOM, KOZHIKODE TALUK.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.P.B.KRISHNAN
SRI.K.JAYAKUMAR

RESPONDENTS/RESPONDENTS/PETITIONER & RESPONDENTS 2 & 3:

1. U.GIRIJA, W/O LATE MADHAVAN, AGED 63, ULLATTUTHODI, CHERUVANNUR AMSOM DESOM, KOZHIKODE TALUK.

2. SASI, S/O VISALA, AGED 42, RESIDING AT DO. DO.

3. BABURAJ, AGED 41, RESIDING AT DO. DO.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.3033/2001 IN CRP 1327/2001

DISMISSED

19.7.2007

SD/-J.B.KOSHY, JUDGE
SD/-K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No. 1327 of 2001

ORDER

Balachandran, J.

The first counter petitioner in R.C.P.No.121/94 on the file of the Rent Control Court, Kozhikode is the petitioner. The first respondent/landlady filed the above RCP seeking for an order of eviction of the petitioner and respondents 2 and 3 invoking grounds under Sections 11(2)(b), 11(3), 11 (4)(i), 11(4)(ii) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The Rent Controller disallowed the claim for eviction under Sections 11(2)(b), 11(3), 11(4)(ii) and 11(4)(v) of the Act, but, allowed eviction under Section 11(4) (i) of the Act. Rejection of the claim for eviction under Sections 11(2)(b), 11(3), 11(4)(ii) and 11(4)(v) of the Act was assailed by the first respondent/landlady in R.C.A.No.169/98 and the

eviction ordered under Section 11(4)(i) of the Act was assailed by the petitioner/tenant in R.C.A.No. 119/98 before the Rent Control Appellate Authority, Kozhikode. The appellate authority dismissed both the appeals. Consequently, the eviction ordered under Section 11(4)(i) of the Act is now concurrent.

2. Arguments are advanced by the learned counsel for the petitioner strenuously on the strength of the evidence adduced in the case on facts that findings entered into by the authorities below that the petitioner has sub let the scheduled building to respondents 2 and 3 is erroneous and that eviction should not have been ordered by the authorities below under Section 11(4)(i) of the Act. It is also urged on behalf of the petitioner that respondents 2 and 3 are his employees in running the hotel and that there is no sub letting.

3. It is worthy to note that on a proper evaluation of the entire evidence in the case, the authorities below have concurrently found that the

petitioner is out of possession and that the sub tenants are in exclusive occupation of the scheduled building. The said finding is a finding of fact, based on evidence. The learned counsel for the petitioner was not able to convince us that grounds exist for us to interfere in revision in the concurrent findings of the authorities below on facts that the petitioner has sub let the scheduled building to respondents 2 and 3 or that there is any illegality, impropriety or irregularity in the concurrent findings of the authorities below, entailing order of eviction under Section 11(4)(i) of the Act. This revision in the circumstances is devoid of merit and deserves only to the dismissed.

4. Finally, it is urged by the counsel for the petitioner that some time be granted to the petitioner to surrender vacant possession of the scheduled building to the first respondent/ landlady. Though there is no much justification in asking for time to surrender vacant possession when he has already sub let the scheduled building to

respondents 2 and 3, inasmuch as it is submitted by the counsel for the petitioner that the petitioner has taken back possession from respondents 2 and 3 and is in actual physical possession of the scheduled building and is conducting hotel business, we are of the view that the request so made can be granted imposing necessary conditions.

In the result, we dismiss this Civil Revision Petition. At the same time, we grant the petitioner time till 31.12.2007 to surrender vacant possession of the scheduled building to the first respondent/ landlady on the following conditions:

i. that he shall deposit the entire arrears of rent, if any, in the execution court with a detailed statement as to its correctness within three weeks from today.

ii. that he shall file an affidavit before the execution court within one month from today, reporting that all arrears of rent are cleared and unconditionally undertaking that he will surrender vacant possession of the scheduled building to the

first respondent/landlady positively on or before 31.12.2007 and that he will continue to pay the future monthly rents on the due dates itself till he actually surrenders vacant possession of the scheduled building to the first respondent/landlady and

iii. that in case the petitioner fails to comply with the above conditions, he shall not be entitled to the benefit of continuing in occupation of the scheduled building till 31.12.2007 and shall be liable to be evicted immediately on the expiry of the aforesaid one month in execution of the order of eviction passed against him.

(J.B.Koshy, Judge)

19th July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No.1327 of 2001

ORDER

19th July, 2007